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SCULLY, SCOTT, MURPHY, & PRESSER 400 GARDEN CITY PL GARDEN CITY, NY 11530			ART UNIT 2192	
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DATE MAILED: 11/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/714,303

Applicant(s)

MCCAIN, BRIAN S.

Examiner

Thai Van Pham

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/18/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Remarks*

1. Applicant's amendment dated on 10/18/2006 responds to the Office Action dated on 07/20/2006, provided in the rejection of claims 1 – 20.

Claims 1, 9, and 15 have been amended

Claims 1 – 20 remain pending in this application and have been fully considered by Examiner.

Applicant has amended the independent claims 1, 9, and 15 to recite, "the client side initially not having a functionality for implementing the first network application" to redefine what is being claimed. Examiner acknowledges that support for the amendment can be found in paragraphs [0013] and [0014] of the original specification.

As a result of the amendment to the claims above, Applicant has argued: "*Britton's client computer initially includes an application program. While executing that application, Britton appears to be downloading class files as needed by that application*", thus, "*Britton does not disclose, teach or suggest the subject matter recited in Applicant's*" claims (See Applicant's **Remarks** on page 8). Examiner has fully considered Applicant's argument and, upon further review of **Britton's** disclosure, concluded that the argument is not persuasive as will be addressed under **Prior Art's Arguments – Rejections** section below.

Accordingly, the rejection of the claims over the prior art in the previous Office Action dated 07/20/2006 is maintained and **THIS ACTION IS MADE FINAL**. See

MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Prior Art's Arguments – Rejection***

2. Applicant's argument filed on 10/18/2006, in particular on pages 8 – 9, has been fully considered but it is not persuasive.

As pointed out by Applicant in support for the amendment of the independent claims (see Applicant's **Remarks** on page 8 for further details), Applicant describes how maintenance of software version compatibility between client and server hosts can be achieved by dynamically downloading client code from a server to the client, even when *"the client is designed as a skeleton containing only the necessary information to connect to a server and to download and use client code from the server"* (paragraph [0014]). Applicant further provides an example of an embodiment of the invention: *"For example, an object-oriented software such as Java<sup>TM</sup> may be used. Java code provides*

*specialized class loaders, also referred to as user-defined or custom class loaders, which can be used to dynamically download and use the software from the server as objects on an as needed basis"* (paragraph [0014]). In other words, Applicant's invention enables a client to download the classes or program components of an application, which have not yet been implemented on client side, from the server using Java™ and class loaders

**Britton** also uses Java™ and class loaders and more generally, component loaders to illustrate his invention of dynamic selection and download of program components based on changeable attributes. Program components include Java™ class files as well as program components written in any other programming language (Fig. 4 and associated text, e.g., Col.11: line 46 – Col.12: line 46; "client computer **490**" dynamically downloads program components for "application program **480**" as determined by "attribute inserter **450**", from "component server **440**"). **Britton** disclosure primarily provides illustrations for downloading program components from a server as objects on an as needed basis for an existing application on a client according to version attributes. Nevertheless, it is well understood that the disclosure also encompasses downloading program components that have not yet been implemented on the client side as this is an important feature of Java Virtual Machine. As a result, **Britton's** teaching of the dynamic downloading of program components is well within the same function of Applicant's disclosure and/or argument. Furthermore, it is also well understood that a software application is commonly a collection of smaller

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components and/or applications; thus, downloaded program components may constitute smaller applications within a large application (i.e. skeleton).

As a result, in Examiner's best understanding **Britton's** disclosure encompasses the dynamic downloading of server code on a client to support multiple versions of client and servers in a client/server application, even when the client side initially not having a functionality for implementing the first network application (i.e., missing program components) as claimed by Applicant.

### ***Claim Rejections***

3. Claims 1 – 20 stand finally rejected. Claims 1 – 4, 9 – 12, and 15 – 18 are being anticipated by **Britton** (6,279,030) and claims 5 – 8, 13 – 14, and 19 – 20 are unpatentable over **Britton** (6,279,030), as applied below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 – 4, 9 – 12, and 15 – 18 are rejected under 35 U.S.C. 102(b) as being anticipated by **Britton** (6,279,030).

-- Claims 1 and 9: **Britton** discloses a method and program stored on a computer readable medium containing instructions executable by a client host in obtaining software, comprising:

- establishing a session with a first server host (Col.7 lines 24 – 55);
- downloading first software from the first server host for use during the session to implement a client side of a first version of a first network application, the client side initially not having a functionality for implementing the first network application.

(Col.7 lines 24 – 55, Col.9 lines 33 – 51); and the first software is compatible with software executed at the first server host to implement a server side of the first version of the first network application (Col.9, lines 47 – 51

Fig. 4 and associated text, e.g., Col.11: line 46 – Col.12: line 46; “client computer **490**” dynamically downloads program components for “application program **480**” as determined by “attribute inserter **450**”, from “component server **440**”)

-- Claims 2 and 10: **Britton** discloses the method and program of Claim 1 and further discloses the downloading comprises downloading the first software from the first server host dynamically, as needed, by the client host (Fig. 4, Col.8 lines 23 – 33).

-- Claims 3 and 11: **Britton** discloses the method and program of Claim 1 and further discloses the client host initiates the downloading when it determines that it needs the first software to interact with the first server host (Col.7 lines 24 – 55).

-- Claims 4 and 12: **Britton** discloses the method and program of Claim 1 and further discloses the downloading comprises downloading the first software as at least one object using at least one specialized class loader (Fig. 3, Col.7 line 59 – Col.9 line 33).

-- Claim 15: **Britton** discloses a method for use by a server host in obtaining software, comprising:

- participating in a session established by a first client host (Col.7 lines 24 – 55);
- downloading first software from the first client host for use during the session to implement a server side of a first version of a first network application; wherein the first software is compatible with software executed at the first client host to implement a client side of the first version of the first network application, the client side initially not having a functionality for implementing the first network application.

(Col.7 lines 28 – 35, Col.9 lines 33 – 51, Col.12, lines 26 – 45

Fig. 4 and associated text, e.g., Col.11: line 46 – Col.12: line 46; “client computer **490**” dynamically downloads program components for “application program **480**” as determined by “attribute inserter **450**”, from “component server **440**”).

-- Claim 16: **Britton** discloses the method of Claim 15 and further discloses the downloading comprises downloading the first software from the first client host dynamically, as needed, by the server host (Fig. 4, Col.8 lines 23 – 33).

-- Claim 17: **Britton** discloses the method of Claim 15 and further discloses the server host initiates the downloading when it determines that it needs the first software to interact with the first client host (Col.9 lines 48 – 54, Col.12 lines 26 – 45).



--Claim 18: **Britton** discloses the method of Claim 15 and further discloses the downloading comprises downloading the first software as at least one object using at least one specialized class loader (Fig. 3, Col.7 line 59 – Col.8 line 33).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 – 8, 13 – 14, and 19 – 20 are rejected under 35 U.S.C. 103(a) as being obvious over **Britton** (6,279,030).

-- Claims 5 and 13: **Britton** discloses the method and program of Claim 1 but does not explicitly disclose that the method further comprising:

- establishing a session with a second server host. However, **Britton** shows in Figure 2 that a client and server hosts communicate by means of a communication network.

Official Notice is taken that it is old and well known that a plurality of client and server hosts can inter-communicate in a single network as each client/server is uniquely identified by its IP addresses. **Britton** uses a mortgage calculator application in which many client hosts communicate with a server host using different versions of the application as an example to illustrate his invention. Since a plurality of server hosts can also be available for access in a network at the same time, it is desirable for a user

to have the ability to simultaneously run a plurality of the mortgage application to compare the mortgage corresponding to different interest rates and mortgage terms for cost analysis. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made to further allow the client host in the method and program of **Britton** the ability of establishing a session with a second server host;

- and downloading second software from the second server host for use during the session therewith to implement a client side of a second version of the first network application that differs from the first version; and the second software is compatible with software executed at the second server host to implement a server side of the second version of the first network application. In the mortgage calculator application under discussion, the application being run on the different servers can be of different versions of the software. It is necessary for the client host to locally implement all the client versions of the software in order to communicate with the server hosts. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made to further allow the client host in the method and program of **Britton** the ability to download a second software from the second server host to download and implement a client side of a second version of the first network application.

-- Claims 6 and 14: **Britton** discloses the method and program of Claim 5 but does not explicitly disclose the sessions between the client hosts with the first and second server hosts overlap, at least in part. It is, however, obvious that since the session between

the client host with the first server host running the first version of the mortgage calculator application and the session between the same client host with the second server host running the second version of the mortgage calculator application are independent upon each other, the two sessions can overlap over partially overlap as long as the necessary computing resources are available. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made recognize that the sessions with the first and second server hosts can overlap, at least in part.

-- Claim 7: **Britton** discloses the method of Claim 1 but does not explicitly disclose that the method further comprising:

- establishing a session with a second server host. However, **Britton** shows in Figure 2 that a client and server hosts communicate by means of a communication network.

Official Notice is taken that it is old and well known that a plurality of client and server hosts can inter-communicate in a single network as each client/server is uniquely identified by its IP addresses. **Britton** uses a mortgage calculator application in which many client hosts communicate with a server host using different versions of the application as an example to illustrate his invention. Since more than one server hosts can also be available for access in a network at the same time, it is desirable for a user to have the ability to access an on-line real estate application to look up homes listed for sale while having the mortgage calculator available to figure out the corresponding cost information. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made to further allow the client in

the method and program of **Britton** the ability of establishing a session with a second server host;

- downloading second software from the second server host for use during the session therewith to implement a client side of a second network application that differs from the first network application; wherein the second software is compatible with software executed at the second server host to implement a server side of the second network application. In the mortgage calculator and on-line real estate applications under discussion, it is necessary for the client host to locally implement both client software sides of the applications in order to communicate with the server hosts. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made to further allow the client host in the method and program of **Britton** the ability to download and implement the real estate client software from the second server host.

-- Claim 8: **Britton** discloses the method of Claim 1 but does not explicitly disclose that the method further comprising:

- establishing a further session with the first server host. Official Notice is taken that it is old and well known that a server host can host a plurality of applications and similarly, a client host can run a plurality of applications. **Britton** uses a mortgage calculator application in which many client hosts communicate with a server host using different versions of the application as an example to illustrate his invention. It is desirable for a user to have the ability to access an on-line real estate application to look up homes listed for sale while having the mortgage calculator available to figure out the

corresponding cost information. When both of these two applications are employed on the same server host, it is necessary for the client host to establish two distinct sessions, one is for the mortgage calculator and the other is for the real estate applications. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made to further allow the client in the method and program of **Britton** the ability of establishing a further session with the first server host;

- downloading second software from the first server host for use during the further session to implement a client side of a second network application that differs from the first network application; wherein the second software is compatible with software executed at the first server host to implement a server side of the second network application. In the mortgage calculator and on-line real estate applications under discussion, it is necessary for the client host to locally implement both client software sides of the applications in order to communicate with the server host. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made to further allow the client host in the method and program of **Britton** the ability to download and implement the real estate client software from the first server host; and

- the session and further session with the first server host overlap, at least in part. It is, however, obvious that since the session between the client host with the first server host running the mortgage calculator application and the further session between the same client host with the same server running the real estate application are

independent upon each other, the two session can overlap or partially overlap as long as the necessary computing resources are available. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made recognize that the session and further session with the first server host overlap, at least in part.

-- Claim 19: : **Britton** discloses the method of Claim 15 but does not explicitly disclose that the method further comprising:

- participating in a session established by a second client host. However, **Britton** shows in Figure 2 that a client and server hosts communicate by means of a communication network. Official Notice is taken that it is old and well known that a plurality of client and server hosts can inter-communicate in a single network as each client/server is uniquely identified by its IP addresses. **Britton** uses a mortgage calculator application in which many client hosts communicate with a server host using different versions of the application as an example to illustrate his invention. In the case where the mortgage calculator application running on a second client host is different in version than that of the one running on the first client host and the application software is stored on the second client, it is necessary for the server to participate in a session established by the second host to obtain information to ensure interoperability between the server and second client host. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made to further allow the server in the method and program of **Britton** the ability of participating in a session by a second client host;

- downloading second software from the second client host for use during the session therewith to implement a server side of a second version of the first network application that differs from the first version; wherein the second software is compatible with software executed at the second client host to implement a client side of the second version of the first network application. . In the mortgage calculator application under discussion, it is necessary for the server host to further locally implement the second version of the client software of the application to ensure compatibility with the second client host. Since the server software is stored on the second client host, it is necessary for the server to be able to download the software from the client to locally implement a server side of the second version of the application. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made to further allow the server host in the method and program of **Britton** the ability to download and implement second software from the second client host.

-- Claim 20: **Britton** discloses the method of Claim 15 but does not explicitly disclose the sessions with the first and second client hosts overlap, at least in part. It is, however, obvious that since the first session between the client host with the first server host and the second session between the same client host with the same server are independent upon each other, the two session can overlap or partially overlap as long as computing resources are available. Thus, it would have been obvious to a person of ordinary skills in the art of software development at the time the invention was made recognize that the sessions with the first and second client hosts overlap, at least in part.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai Van Pham whose telephone number is (571) 270-1064. The examiner can normally be reached on Monday - Thursday, 8am - 3pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TVP



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